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May 30, 1997

0403

HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Attn: Chief, Common Carrier Bureau

Re: CC Docket No. 93-193
Reply to Comments of AT&T on
Refund Plan of Roseville Telephone Company

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Federal Communications Commission
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Dear Mr. Caton:

On behalf of Roseville Telephone Company ("RTC"), and pursuant to Section 1.45 of the Commission's Rules, I am filing an original and three copies of RTC's Reply to the Comments of AT&T filed on May 19, 1997. In its Comments, AT&T addressed the Refund Plan filed by RTC on May 1, 1997, pursuant to the requirements of the Commission's *Memorandum Opinion and Order* in CC Docket 93-193, released April 17, 1997.

If you have any questions regarding this matter, please contact me.

Very truly yours,



Paul J. Feldman

Counsel for Roseville Telephone Company

PJF/jr

Enclosures

cc: Certificate of Service

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BEFORE THE

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MAY 30 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
1993 Annual Access Tariff Filings)

CC Docket No. 93-193

To: Chief, Common Carrier Bureau

REPLY TO COMMENTS OF AT&T

Roseville Telephone Company ("RTC"), by its attorneys and pursuant to Section 1.45 of the Commission's Rules, hereby submits its Reply to the "Comments" of AT&T Corp. filed on May 19, 1997.¹ In its Comments, AT&T addresses the Refund Plan filed by RTC on May 1, 1997 pursuant to the requirements of the Commission's Memorandum Opinion and Order in CC Docket 93-193, released April 17, 1997 ("MO&O"),² and asserts that RTC has improperly calculated the refund ordered by the Commission. As shown below, AT&T's assertions are incorrect.

In the MO&O, the Commission determined that the lead-lag study prepared by RTC in connection with its 1993 annual access tariff filing contained certain specified flaws, and directed RTC to utilize the standard 15 day allowance method to calculate

¹ Pursuant to the instructions of the staff of the Competitive Pricing Division, RTC is treating AT&T's Comments as an "opposition" to RTC's Refund Plan for purposes of calculating a pleading cycle under Section 1.45 of the rules, and accordingly, this pleading is a "reply" under Section 1.45(b).

² AT&T's Comments also addressed filings by other local exchange carriers.

cash working capital ("CWC") for the period in question. The reduction in CWC constitutes a refund amount, to which interest is to be added, and that total refund is to be implemented by lowering RTC's tariffed access charge rates over a one year period from July 1, 1997 through June 30, 1998. See MO&O at para. 107. In its Refund Plan, RTC noted that while it disputed the Commission's critique of its lead-lag study, it would not seek reconsideration of MO&O, in order to minimize litigation costs.

The Refund Plan accordingly demonstrated the revised calculation of RTC's CWC for the 1993 Tariff period, multiplying the rate of .04109 (15 days/365 days) against RTC's traffic sensitive CWC expenses of \$3,218,399, as set forth in RTC's 1993 annual access charge filing. The difference between the CWC deduced from this method, and the CWC deduced using RTC's lead-lag study, was \$74,018. To this base refund amount, RTC added interest of \$12,967, based on the lowest rate prescribed by the I.R.S. for overpayments, as of July 1, 1995, compounded at six month intervals from January 1, 1995 through June 30, 1997, as ordered in paragraph 107 of the MO&O.

AT&T criticizes RTC's calculations on three bases. First, AT&T asserts that the standard 15 day allowance method should have been applied "to the full amount of the total interstate cash working capital expense, i.e., \$9,858,273," rather than to the \$3,218,399 traffic sensitive expense base used by RTC in the Refund Plan. AT&T Comments at page 9. AT&T's assertion is fatally flawed, however, because it seeks to develop a refund that is based on total interstate expenses that are not assigned or allocated to the traffic sensitive tariffed services that were suspended and investigated in this proceeding. In 1993 RTC participated in the NECA Common Line pool, and

accordingly RTC's 1993 access charge filing was made to establish company-specific interstate traffic sensitive rates. NECA made its own filing in which it developed and supported the common line rates filed in its Tariff No. 5, in which RTC concurred. In the MO&O, the Commission specifically suspended and set for investigation RTC's traffic sensitive access charge filing, and thus the rates at issue in this proceeding are only those for RTC's traffic sensitive switched and special access services. While AT&T references RTC's 1993 total interstate working cash allowance,³ in calculating the rates in its 1993 access charge tariff, RTC appropriately used only the CWC for the expenses assigned or allocated to traffic sensitive switched and special access services. Yet, now that refunds are to be calculated, AT&T suggests that the expense base should be expanded to include expenses allocable to non-traffic sensitive services such as common line, billing and collection, etc. that were not included in the traffic sensitive rate development. Such over-reaching by AT&T was not specified or contemplated in the portions of the MO&O addressing the calculation of RTC's refund,⁴ and should not be accepted by the Bureau.

AT&T's other criticisms of the Refund Plan are also fatally flawed. It asserts that the interest to be added into the refund should have been based on a rate of 8 percent (rather than the 6.5 percent rate used in the Refund Plan) and that the interest should be applied from July 1, 1993 forward, rather than to the period commencing January 1,

³ See Comments at note 16, referring to CWC-1, line 16.

⁴ In its original Petition for Suspension and Investigation of RTC's 1993 Access Charge Tariff, AT&T similarly proposed that CWC be calculated on a total interstate basis, yet nothing in the MO&O demonstrated that the Commission accepted AT&T's position on this issue.

1995. These assertions are flatly contradicted by the language of the MO&O. In paragraph 107 therein, the Commission stated that "[i]nterest shall be added to the refund amount, using the lowest of the overpayment interest rates of the US Internal Revenue Service in effect at the midpoint of this investigation, July 1, 1995, and compounded at six month intervals from January 1, 1995 through June 30, 1997" (emphasis added). The interest calculation in the Refund Plan fully complied with the above cited instructions. Specifically, the IRS established two overpayment interest rates to be in effect as of July 1, 1995: a general rate of 8 percent, and a 6.5 percent rate for overpayments by corporations exceeding \$10,000. See Exhibit 1 attached hereto.⁵ In preparing its Refund Plan, RTC selected the lower of the two rates (6.5 percent), as specifically ordered in paragraph 107 of the MO&O. Similarly, the period of time to which the refund was applied (January 1, 1995 through June 30, 1997) was precisely the period specifically ordered by the Commission in paragraph 107 of the MO&O. AT&T provides no basis for its assertion that the time period should be different than the one used in the Refund Plan. AT&T's baseless wishes should not be indulged by the Bureau.

Conclusion

AT&T's Comments improperly propose to expand the CWC expense base for calculation of refunds to include expenses not used in the development of the rates at

⁵ Exhibit 1 contains the appropriate page from IRS Cumulative Bulletin Rev. Proc. 95-17, setting forth the interest rate for large corporate overpayments, effective January 1, 1995 through June 30, 1997. The Exhibit also includes paragraph 2765 from CCH's 1996 U.S. Master Tax Guide, describing the relationship between the two rates.

issue in this proceeding. Furthermore, AT&T's criticism of the calculation of interest in the Refund Plan is directly contradicted by the language of the MO&O. Accordingly, AT&T's Comments should be disregarded, and RTC's Refund Plan accepted.⁶

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY

By:



George Petrutsas
Paul J. Feldman
Eric Fishman

Its Attorneys

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May 30, 1997

⁶ In light of AT&T's reference (in the Conclusion of its Comments) to suspending and investigating LEC tariffs based on the Docket 93-193 refund plans, RTC urges the Bureau to attempt to resolve these issues prior to the June 16th deadline for filing annual access tariffs, so that the parties and the Bureau do not have to unnecessarily litigate the same issues in the context of petitions against 1997 tariffs.

EXHIBIT 1

Jul. 1, 1993--Sep. 30, 1993	9%	23	577
Oct. 1, 1993--Dec. 31, 1993	9%	23	577
Jan. 1, 1994--Mar. 31, 1994	9%	23	577
Apr. 1, 1994--Jun. 30, 1994	9%	23	577
Jul. 1, 1994--Sep. 30, 1994	10%	25	579
Oct. 1, 1994--Dec. 31, 1994	11%	27	581
Jan. 1, 1995--Mar. 31, 1995	11%	27	581
Apr. 1, 1995--Jun. 30, 1995	12%	29	583
Jul. 1, 1995--Sep. 30, 1995	11%	27	581
Oct. 1, 1995--Dec. 31, 1995	11%	27	581
Jan. 1, 1996--Mar. 31, 1996	11%	75	629
Apr. 1, 1996--Jun. 30, 1996	10%	73	627
Jul. 1, 1996--Sep. 30, 1996	11%	75	629
Oct. 1, 1996--Dec. 31, 1996	11%	75	629
Jan. 1, 1997--Mar. 31, 1997	11%	27	581
Apr. 1, 1997--Jun. 30, 1997	11%	27	581

Corporate Overpayments Exceeding \$10,000 from Jan. 1, 1995 - Present

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING \$10,000

FROM JANUARY 1, 1995 - PRESENT

	RATE	TABLE IN 1995-1 C.B.	PG.
Jan. 1, 1995--Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995--Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995--Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995--Dec. 31, 1995	6.5%	18	572

Jan. 1, 1996--Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996--Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996--Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996--Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997--Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997--Jun. 30, 1997	6.5%	18	572

2764. Refund Reduction for Past-Due, Legally Enforceable Debts. The IRS will reduce the amount of any tax refund payable to a taxpayer by the amount of any past-due, legally enforceable nontax debt that is owed to any federal agency. Debts that are less than \$25 and those that have been delinquent for more than 10 years are exempt. In most cases, the creditor federal agencies must have first attempted to collect the debt by using salary offset and administrative procedures. The federal agency is also required to notify the taxpayer that a debt will be referred to the IRS for refund offset if the debt remains unpaid after 60 days or if there is insufficient evidence that the debt is either not past due or not legally enforceable (Code Sec. 6402(d); Reg. § 301.6402-5).²¹

2765. Interest on Refund Claim. When a return has been properly filed in processible form, interest is allowed on a refund from the date of overpayment to a date preceding the date of the refund check by not more than 30 days (Code Sec. 6611(b)(2)).¹ If a return is filed late, no interest is allowed for any day before the date on which it is filed (Code Sec. 6611(b)(3)).² No interest is payable on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (Code Sec. 6611(e)).³ This 45-day processing rule is extended to all types of original tax returns, effective for returns required to be filed (without regard to extensions) on or after January 1, 1994.

The interest rate the IRS must pay for overpayment of taxes is the short-term federal rate plus two percentage points (Code Sec. 6621(a)(1)).⁴ For large corporate overpayments (any portion of overpaid tax that exceeds \$10,000), the rate is reduced to the sum of the short-term federal rate plus one-half of one percentage point. These rates are adjusted quarterly, with each successive rate becoming effective two months after the date of each quarterly adjustment. The rate for the first quarter (January through March 1995) was 8% (6.5% for large corporate overpayments). The rate for the second quarter (April through June 1995) was 9% (7.5% for large corporate overpayments), and the rate for the third and fourth quarters (July through December 1995) was 8% (6.5% for large corporate overpayments).⁵

2773. Quick Carryback Refund and Postponement of Tax Payment. A corporation (other than an S corporation) that has an overpayment of tax as a result of a net operating loss, capital loss, business and research credits, or a claim-of-right adjustment can file an application on Form 1139 for a tentative adjustment or refund of taxes for a year affected by the carryback of such loss or credits or by such adjustment. A noncorporate taxpayer can apply for similar adjustments on Form 1045.⁶ For provisions on the quick refund of a capital loss carryback, see ¶ 1188.

The application itself is not a formal refund claim and its rejection in whole or in part cannot be made the basis of a refund suit. However, the taxpayer can file a regular claim for refund within the limitation period (see ¶ 2763), and this claim can be made the basis for a suit. For losses and credits, the IRS must allow or disallow the refund or credit within 90 days from the later of (1) the date the application is filed, or (2) the last day of the month in which the return for the loss or unused credit year is due (giving effect to extensions of time). For claim-of-right adjustments, the IRS must allow or disallow the refund or credit within 90 days from the later of (1) the date the application is filed, or (2) the date of the overpayment (Code Sec. 6411(b) and Code Sec. 6411(d)).⁷

If a corporation (but no other taxpayer) expects a net operating loss carryback from the current (unfinished) tax year, it can, subject to certain limitations, extend

Footnote references are to paragraphs of the 1996 Standard Federal Tax Reports.

²¹ ¶ 39,460, 39,474

¹ ¶ 40,330

² ¶ 40,330

³ ¶ 40,330

⁴ ¶ 40,350

⁵ ¶ 40,355.01

⁶ ¶ 39,676, 39,690.01

⁷ ¶ 39,670

CERTIFICATE OF SERVICE

I, Judy Ryan, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that true copies of the foregoing Reply to Comments of AT&T were served this 30th day of May, 1997, upon:

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